

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

HEARTS ON FIRE COMPANY, LLC,

Plaintiff,

v.

EIGHTSTAR DIAMOND COMPANY and GRS
JEWELERS, INC.,

Defendants.

CIVIL ACTION NO. 04 12258-JLT

**PLAINTIFF HEARTS ON FIRE COMPANY, LLC'S REPLY TO
DEFENDANT EIGHTSTAR DIAMOND COMPANY'S COUNTERCLAIMS**

Plaintiff Hearts On Fire Company, LLC ("HOF") hereby responds to the allegations contained in the numbered paragraphs of Defendant EightStar Diamond Company's ("EightStar") Counterclaims for Declaratory Judgment as follows:

I. PARTIES AND JURISDICTION

1. Admitted.
2. The allegations contained in this paragraph assert legal conclusions to which no response is required.
3. The allegations contained in this paragraph assert legal conclusions to which no response is required.
4. The allegations contained in this paragraph assert legal conclusions to which no response is required. To the extent the allegations in this paragraph require any response, HOF denies them.

5. The allegations contained in this paragraph consist of EightStar's legal strategy, and therefore no response of HOF is required. To the extent the allegations in this paragraph require a response, HOF denies them.

FIRST CLAIM FOR RELIEF
Declaratory Judgment of Noninfringement and Nonregistrability

1. The allegations contained in this paragraph assert legal conclusions to which no response is required.

2. HOF admits the allegations asserted in the first sentence of this paragraph. Attachments 1 and 2 to Eightstar's Counterclaims speak for themselves. To the extent the allegations asserted in the second sentence of this paragraph alter or vary the contents of Attachments 1 and 2, such allegations are denied.

3. Denied. Answering further, HOF states that on May 31, 2005, Registration Nos. 2956851, 2956852, 2956853, and 2956854 issued with respect to each of the two trademarks at issue in this proceeding.

4. Denied.

5. Denied.

6. Denied.

7. Attachments 1 and 2 to EightStar's Counterclaims speak for themselves. To the extent the allegations asserted in this paragraph alter or vary the contents of Attachments 1 and 2, such allegations are denied.

8. Denied.

9. Denied.

10. Denied.

11. The allegations contained in this paragraph assert a legal conclusion to which no response is required.

12. Denied.

II. SECOND CLAIM FOR RELIEF
Declaratory Judgment of Noninfringement

1. HOF's responses to the preceding paragraphs are incorporated by reference herein.

2. Admitted

3. Denied.

4. Denied.

5. The allegations in this paragraph are legal conclusions to which no response is required. To the extent the allegations in this paragraph require a response, HOF denies them.

III. RESERVATION OF RIGHTS TO AMEND

The allegations contained in this un-numbered paragraph contain conclusions of law to which no response is required.

AFFIRMATIVE DEFENSES

First Affirmative Defense

EightStar's counterclaims are barred for failure to state a claim.

Second Affirmative Defense

EightStar's counterclaims are barred for failure to assert a case or controversy as required by the Declaratory Judgment statute.

Third Affirmative Defense

EightStar's counterclaims are barred by the equitable doctrine of Laches.

Fourth Affirmative Defense

EightStar's counterclaims are barred by their unclean hands.

Fifth Affirmative Defense

EightStar's counterclaims are barred by the equitable doctrine of Estoppel.

Sixth Affirmative Defense

EightStar's counterclaims are barred by the fact that the claims are not ripe for adjudication.

Seventh Affirmative Defense

EightStar's counterclaims are barred by the fact that the claims are moot.

JURY DEMAND

HOF hereby demands a trial by jury on all matters so triable.

HEARTS ON FIRE COMPANY, LLC

By its attorneys,

/s/ Mark Robins

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